

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FREDERIC W. BERTHOFF,)
Petitioner,)
v.) Civil Action No. 04-10170-WGY
UNITED STATES OF AMERICA,)
Respondent.)

Government's Motion to Remove Default

The United States of America, by Michael J. Sullivan, United States Attorney for the District of Massachusetts, pursuant to Federal Rules of Civil Procedure 55(c) and 60(b), respectfully requests that the Court set aside the Notice of Default entered against the United States on February 26, 2004.

In support of this motion, the government states as follows:

1. On January 15, 2004, Frederic Berthoff filed a habeas corpus petition pursuant to 28 U.S.C. § 2255.
2. On January 28, 2004, the Court ordered the government to respond to the petition within 20 days of receipt of the Court's order. The government received the Court's order on or about January 29, 2004. The government's opposition, therefore, should have been filed on or about February 18, 2004.
3. The undersigned Assistant U.S. Attorney, who is responsible for responding to Berthoff's petition, miscalculated the date upon which the date the government's opposition was due, thinking it was due on February 23, 2004.

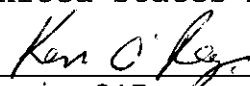
4. During the four and half weeks since the Court ordered the government to respond to the petition, the undersigned Assistant U.S. Attorney has been supervising Assistant U.S. Attorneys in Springfield who have been on trial as well as handling other investigative and prosecutive matters. As a result, he failed to file an appropriate motion to extend the government's time to respond to Berthoff's petition. The government respectfully submits that the fulfilling of these other responsibilities constituted mistake, inadvertence and excusable neglect sufficient to permit the Court to remove the default in this case.

5. In order to permit the government to prepare its opposition to Berthoff's petition, the government respectfully requests that the Court extend for two weeks from today, until March 15, 2004, the government's time to file its memorandum. As the Court is aware, the litigation involving Berthoff's conviction, sentencing, appeal and prior post conviction petition has been extensive. The government respectfully submits that the Court should hear and consider the government's arguments in opposition to Berthoff's most recent petition.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney


By:


Kevin O'Regan
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

March 1, 2004

I hereby certify that I have served a copy of the foregoing by mail on Martin D. Boudreau, 487 Adams Street, Milton, MA, 02186.



Kevin O'Regan
Assistant U.S. Attorney